

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIAN AVERY SMITH,

Defendant.

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**DECISION AND ORDER**  
23-CR-110-A

Defendant Brian Avery Smith is charged in a 4-count Indictment (Dkt. No. 30). The case was referred to Magistrate Judge Michael J. Roemer pursuant to 28 U.S.C. § 636(b)(1) for the conduct of pretrial proceedings.

On August 29, 2024, the Magistrate Judge filed a Report, Recommendation and Order (“RR&O”) (Dkt. No. 58) that recommends Defendant’s motion to suppress and motion to dismiss (Dkt. No. 45) be denied. At Defendant’s request (Dkt. No. 61), the parties were given to October 21, 2024, to file any objections to Magistrate Judge Roemer’s RR&O. No objections to the RR&O were filed by the parties. Because there are no objections to the RR&O, the Court reviews the RR&O on clear error review.

The Court adopts the reasoning of the Magistrate Judge and deems no further discussion necessary.

Upon clear error review pursuant to 28 U.S.C. §636(b)(1), and for the reasons set forth in the RR&O, it is hereby

**ORDERED** that the RR&O (Dkt. No. 58) is adopted in its entirety; and it is further

**ORDERED** that Defendant's motion to suppress and motion to dismiss (Dkt. No. 45) is **DENIED**. The parties shall appear for a status conference to set a date for trial or plea on October 28, 2024, at 9:30 am.

**IT IS SO ORDERED.**

*s/Richard J. Arcara*  
HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: October 22, 2024  
Buffalo, New York